

Remarks

Claims 41-52 are pending in this application upon entry of the amendments presented herein. Claim 41 is amended to remove the recitation of “preventing,” “in need of such treatment or prevention,” “clathrate,” “hydrate,” and “prodrug.” New claim 52 is added to recite “hydrate” in a dependent claim, and thus, is properly supported by the specification and claims as originally filed.

The title is amended to more correctly reflect the subject matter recited by the pending claims, and the specification is amended to correct typographical errors. No new matter has been introduced.

Applicant respectfully submits that all of the pending claims are allowable for at least the following reasons.

A. The Rejection Under Obviousness-Type Double Patenting Should Be Withdrawn

On pages 2-3 of the Office Action, claims 41-51 are provisionally rejected under obviousness-type double patenting over claims 55-70 of co-pending application no. 10/769,860 (“the ‘860 application”). Without addressing the substance of the rejection, Applicant respectfully points out that a terminal disclaimer is being submitted in the ‘860 application, which was filed later than the present application. In view of the terminal disclaimer submitted in the ‘860 application, Applicant respectfully requests that this rejection be withdrawn.¹

B. The Rejection Under 35 U.S.C. § 112, ¶1 Should Be Withdrawn

On pages 3-5 of the Office Action, claims 41-51 are rejected under 35 U.S.C. § 112, ¶1, as allegedly failing to comply with the written description requirement. In particular, it is alleged that adequate written description is not provided for the term “prodrug.” Applicant respectfully disagrees with this assertion. However, the term “prodrug” was removed from the pending claims solely to expedite the prosecution of the present application. In view of the removal of the term “prodrug,” Applicant respectfully requests that the rejection of claims be withdrawn.

On pages 5-6 of the Office Action, claims 41-51 are rejected as allegedly failing to comply with written description requirement. In particular, it is alleged that the specification is not enabling for the term “prevention.” (Office Action, page 5). Although

¹ Applicant respectfully points out that the requirement that a terminal disclaimer be filed over a later filed application is technically incorrect.

Applicant respectfully disagrees, the term was removed from the pending claims to expedite the prosecution of this application. Therefore, Applicant respectfully requests that this rejection be also withdrawn.

Conclusion

For at least the foregoing reasons, Applicant submits that all of the pending claims are allowable and should proceed to allowance. In the alternative, the Examiner respectfully requested to contact the undersigned.

No fee is believed due for this submission. If any fees are required, however, please charge such fee(s) to Deposit Account No. 503013.

Respectfully submitted,

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